



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNR, MNDC, OLC, FF, O

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for landlord's use of property; for a monetary order for the cost of emergency repairs; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The landlord and both tenants attended the hearing, and the landlord and one of the tenants gave affirmed testimony. The parties were given the opportunity to question each other respecting the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Should the notice to end the tenancy be cancelled?
- Have the tenants established a monetary claim as against the landlord for the cost of emergency repairs, and more specifically for the cost of replacing the fridge in the rental unit?
- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for overpayment of utilities?
- Have the tenants established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement with respect to utilities for the entire rental building being in the name of the tenants?

Background and Evidence

The tenant testified that this month-to-month tenancy began on November 1, 2015 and the tenants still reside in the rental unit. Rent in the amount of \$1,400.00 per month is payable on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$700.00 as well as a pet damage deposit which the tenant believes was \$300.00. Both deposits are still held in trust by the landlord. The rental unit is the upper level of a house with a suite in the lower level.

The tenants have provided a Monetary Order Worksheet setting out the following claims:

- \$300.00 for fridge replacement;
- \$146.99 for recovery of natural gas charges;
- \$202.44 for recovery of electrical bill charges.

The tenant also testified that on November 15, 2015 he sent an email to the landlord advising that the fridge was not working. Copies of emails exchanged between the parties have been provided for this hearing. The landlord responded with a phone number of an appliance repair person and the tenant called, but there was no answer. It was Sunday, and the tenant had noticed the day before that the fridge portion was not functioning, and if the tenant waited for the appliance repair person to answer the call another day, the food in the fridge would have spoiled. The tenant found one available on the Sunday and picked it up that day, having purchased it for \$300.00. The tenants claim that amount from the landlord for the cost of emergency repairs, and the old fridge is now sitting on the deck.

The tenant further testified that the utilities for both suites in the rental house are in the tenants' name, and the landlord had the lower level renovated. Contractors, electricians, and the landlord's nephew were at the lower level on multiple occasions using the utilities. The tenants have provided copies of the utility bills, for which the tenants claim half for November, 2015 to March 1, 2016. New tenants have rented the lower level effective March 1, 2016.

The tenant further testified that the renovations in the lower level of the house caused noises that the tenants were expecting, but also excruciating noises from time-to time. The tenants claim loss of quiet enjoyment to bring the total monetary claim to \$1,000.00.

The tenant also testified that a landlord must not require one tenant to pay utilities for another tenant, and the tenants seek an order that the utilities are not in the tenants' names.

The landlord testified that prior to the tenancy, the parties discussed that utilities would be in the tenants' names and is noted on the tenancy agreement that utilities are not included in the rent. The arrangement was in exchange for the tenants renting at \$1,400.00 per month rather than the market rent of \$1,700.00 per month. The tenants agreed to that and the utilities are still in their name. Heat is provided by natural gas which is controlled completely by the upper unit, and the lower unit has no access to the thermostat. The tenant emailed the landlord saying that he understood that's why the utilities were put in the tenants' name.

With respect to the fridge, the landlord testified that the parties had agreed by text message that the tenant would contact the landlord's appliance repair person the following day to have it repaired. The landlord again contacted the tenant to find out what the repair fellow said about it, which is when the landlord discovered that the tenant bought a fridge. The landlord would have had it repaired or replaced with a fridge still on warranty had the tenant advised the landlord about it. Further, the Maintenance Addendum to the tenancy agreement doesn't provide for changes or upgrades without the landlord's permission. Also, the landlord questions the amount of the cost to the tenant for purchasing another since no receipts have been provided.

The landlord further testified that the tenants emailed the landlord saying that they didn't mind the construction noise during renovations to the lower level of the rental building. The renovations took place sporadically over a one month period, in compliance with the by-law restricting work from 7:00 a.m. to 10:00 p.m. However, never were there power tools used after 7:00 p.m. and the tenants were notified by email what was going to happen and when contractors would be there. The window in the lower level was only left open one night due to fumes.

The landlord has rented the lower level of the rental building effective March 1, 2016 for the market rent of \$1,100.00 including utilities. That unit is a basement suite, a bit smaller than the tenants' rental unit, and the tenants' rental unit in the upper level is much nicer and includes a garage.

Analysis

Firstly, with respect to the notice to end the tenancy, the landlord cannot end a tenancy without using the approved form. An email does not suffice, and the tenancy continues.

With respect to the tenants' application for recovery of the cost of emergency repairs, the *Residential Tenancy Act* defines emergency repairs:

- 33** (1) In this section, "**emergency repairs**" means repairs that are
- (a) urgent,
 - (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
 - (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

I do not find that replacing a fridge can be defined as emergency repairs. However, I accept the claim as part of the tenants' application for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement. In order to be successful in such a claim, the onus is on the tenants to establish the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the landlord's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the tenants made to mitigate, or reduce such damage or loss.

With respect to the fridge, I have reviewed the emails, and I am not satisfied that the fridge was such an emergency that the tenants could not have waited another day for the landlord to replace or repair it. Therefore, I find that the tenants have not mitigated the loss. I also find that the fridge purchased by the tenants belongs to the tenants and the tenants are free to take it with them when they move out of the rental unit, or may sell it and ask the landlord to replace it or repair the fridge that was originally in the rental unit. Therefore, I am not satisfied that the tenants have suffered a loss; the fridge purchased belongs to the tenants. The original fridge is part of the rental unit, and it is not sufficient for a tenant to replace an appliance and require a landlord to pay for that.

With respect to the tenants' claim for loss of quiet enjoyment, the tenant testified that during renovations the tenants expected some noise and told the landlord that it was fine, and the tenants claim for a few excruciating noises that they weren't expecting. I am not satisfied that qualifies as a loss to the tenants, being a minor and brief interference, and I dismiss that portion of the tenants' application.

With respect to the tenants' application for an order that the landlord comply with the *Act*, regulation or tenancy agreement, the *Act* states that a term in a tenancy agreement cannot be "unconscionable." I have reviewed the evidentiary material and particularly the emails and Response of the Landlord, which makes it clear that at no time did the parties discuss splitting utilities. The landlord testified that the rent was below market value to compensate for that, but it was never discussed, and I find that paying utilities for the entire building was not agreed to by the tenants. I find that the tenants agreed to put the utilities in their name by virtue of having done so at the commencement of the tenancy. However, there is no mention of it in any addendum signed by the parties or the tenancy agreement, and I am not satisfied that the tenants agreed to pay for utilities for another rental unit. Any such term in a tenancy agreement is unconscionable.

With respect to the tenants' claim for recovery of natural gas and electricity bills, having found that the tenants did not agree to pay for utilities for the entire building, I find that the tenants have established a claim in the amount of \$146.99 for recovery of natural gas charges and \$202.44 for recovery of electrical bill charges. I further order that future bills be apportioned between the 2 rental units, and that the landlord reimburse the tenants for a proportional amount, to be determined by the parties considering the size of the 2 rental units and other considerations that the parties may agree to.

Since the tenants have been partially successful with the application, the tenants are also entitled to recovery of the \$100.00 filing fee.

I hereby grant a monetary order in favour of the tenants in the amount of \$449.43 and I order that the tenants be permitted to reduce rent by that amount for a future month or may otherwise recover it.

Conclusion

For the reasons set out above, the notice to end the tenancy for landlord's use of property is hereby cancelled and the tenancy continues.

The tenants' application for a monetary order for the cost of emergency repairs is hereby dismissed.

The tenants' application for monetary compensation for loss of quiet enjoyment of the rental unit is hereby dismissed.

I further order that future natural gas and electric bills be apportioned between the 2 rental units, and that the landlord reimburse the tenants for a proportional amount.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$449.43 and I order that the tenants be permitted to reduce rent by that amount for a future month or may otherwise recover it.

This order is final and binding and may be enforced.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 22, 2016

Residential Tenancy Branch